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Mail Contractors of America, Inc. and International Brotherhood of Teamsters, AFL-CIO, Local 470. Case 4-CA-32337

November 24, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMLER, AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on August 4, 2003, the General Counsel issued the complaint on September 9, 2003, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 4-RC-20640. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On October 20, 2003, the General Counsel filed a Motion for Summary Judgment and memorandum in support. On October 23, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but contests the validity of the certification based on its objections to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.¹ See *Pittsburgh Plate*

¹ The Respondent asserts in its answer that the complaint is "procedurally defective" because it is based on a charge that was filed before

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Arkansas corporation with headquarters in Little Rock, Arkansas, and facilities at 2196 Bennett Road, Philadelphia, Pennsylvania, and in Swedesboro, New Jersey (the facilities), has been engaged in the interstate and intrastate transportation of bulk mail for the United States Postal Service.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, received gross revenues in excess of \$50,000 from its interstate operations.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Brotherhood of Teamsters, AFL-CIO, Local 470 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held by mail ballot during the period from May 30 through June 16, 2003, the Union was certified on August 20, 2003, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers and mechanics employed by the Respondent at its facilities located at 2196 Bennett Road, Philadelphia, Pennsylvania and Swedesboro, New Jersey; but excluding all other employees, office clerical employ-

the Union was certified. We reject this contention. The charge was filed on August 4, 2003, after issuance of the Regional Director's Report recommending that the Respondent's objections be overruled and that the Union be certified. The charge alleges an unlawful refusal to bargain, and the charge was pending during the time that the Respondent admittedly refused to bargain, specifically, August 28, as alleged in the complaint. In these circumstances, we find that the complaint allegation is adequately supported by a timely charge. See generally *NLRB v. Fant Milling Co.*, 360 U.S. 301, 306-309 (1959) (a complaint properly may address events occurring after the filing of a charge, where those events are related to those alleged in the charge on which the complaint was based and grew out of them while the proceeding was pending before the Board).

² The Respondent's request that the complaint be dismissed is therefore denied.

Member Walsh did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is appropriate.

ees, casual classification drivers, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive bargaining representative under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated August 25, 2003, the Union requested the Respondent to recognize and bargain, and, by letter dated August 28, 2003, the Respondent refused to do so. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after August 28, 2003, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Mail Contractors of America, Inc., Philadelphia, Pennsylvania and Swedesboro, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Teamsters, AFL-CIO, Local 470, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers and mechanics employed by the Respondent at its facilities located at 2196 Bennett Road, Philadelphia, Pennsylvania and Swedesboro, New Jersey; but excluding all other employees, office clerical employees, casual classification drivers, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Philadelphia, Pennsylvania, and Swedesboro, New Jersey, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed either of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 28, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. November 24, 2003

Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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Dennis P. Walsh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with International Brotherhood of Teamsters, AFL-CIO, Local 470, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time truck drivers and mechanics employed by us at our facilities located at 2196 Bennett Road, Philadelphia, Pennsylvania and Swedesboro, New Jersey; but excluding all other employees, office clerical employees, casual classification drivers, guards, and supervisors as defined in the Act.

MAIL CONTRACTORS OF AMERICA, INC.